ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Competitive Telecommunications Association, Florida Competitive Carriers Association, and Southeastern Competitive Carriers Association	)	
	)	CC Docket No. 98-39
Petition On Defining Certain Incumbent LEC Affiliates As Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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Dated: May 1, 1998

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SUMMARY

Because the ILECs' local service affiliates are not intended to compete with the ILECs, such affiliates are the antithesis of competitive local exchange carriers (CLECs), and must be treated in every way like ILECs. Grant of the Comptel Petition is necessary to prevent the opening of a loophole to Section 251 that will, in time, swallow the rule if left unchecked.

The establishment of ostensible CLECs by ILECs facilitates a wide variety of anticompetitive strategies, including the ILECs' avoidance of their obligations under Section 251(c)(4), and increases the risk of anticompetitive pricing strategies. Moreover, the discrimination that is facilitated by the use of such affiliates is precisely the type of exploitation of bottleneck power that requires dominant treatment of ILECs' local services. Unless the Comptel Petition is granted, the ILECs and their affiliates will be able to exploit the ILECs' bottleneck monopoly to stifle incipient competition and deny customers the benefits of such competition.

The basic problem is that the ILEC and its local service affiliate will not be operating independently of one another. Instead, they will be closely coordinating their efforts in the same manner as a single entity. In essence, the local affiliates will be the alter egos of their affiliated ILECs. The ILECs and their affiliates will be able to exploit the ILEC's bottleneck monopoly by migrating its favored high volume customers to the affiliate, which can become the preferred provider of new,

innovative local services selectively offered to the favored customers. If such affiliates are treated as nondominant CLECs, they will be under no obligation to provide these state-of-the-art services or reasonably priced UNEs comprising those services to other CLECs. As a result, other CLECs and residential and small business subscribers will be stuck with the ILEC's increasingly outmoded and inadequate network services and UNEs at the current excessive rates.

The Michigan and Texas Commissions both recognized the anti-competitive dangers posed by ILEC local service affiliates and their potential to undermine the development of local competition. Both Commissions denied GTE's "competitive" local service affiliate permission to provide local service in GTE's incumbent service areas.

Unless the Commission rules that, under Section 251(h), an ILEC affiliated local service provider is subject to the Section 251(c) obligations of ILECs, ILEC local service affiliates not only will facilitate ILECs' avoidance of their Section 251 obligations, but also will undermine the nondiscrimination provisions contained in CLEC interconnection agreements. Most of those agreements typically provide that the ILEC will not discriminate in ordering, provisioning repair, and maintenance between its own customers and those of the CLEC reselling its service. Most do not, however, address discrimination in favor of the ILEC's own local service affiliates and their customers. Accordingly, the CompTel Petition should be granted.

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MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby responds to the Public Notice requesting comments on the above-captioned Petition for Declaratory Ruling or, in the Alternative, for Rulemaking filed by the Competitive Telecommunications Association, et al. (CompTel Petition).[1] That Petition addresses the appropriate legal and regulatory status of incumbent local exchange carrier (ILEC) affiliates providing local exchange and exchange access services in the ILEC's service area. As explained below, because the ILECs' local service affiliates are not intended to compete with the ILECs, but, rather, to coordinate their operations closely with the ILECs, such affiliates are the antithesis of competitive local exchange carriers (CLECs). So that such ILEC "CLEC" affiliates do not undermine the development of local competition, they must be treated in every way like ILECs.

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[1] Commission Seeks Comment on Petition Regarding Regulatory Treatment of Affiliates of ILECs, CC Docket No. 98-39 DA 98-627 (released April 1, 1998).

A. Introduction

CompTel et al. request that the Commission issue a declaratory ruling that an ILEC affiliate that operates under the same or similar brand name and provides wireline local exchange or exchange access service within the ILEC's region will be considered a "successor or assign" of the ILEC under Section 251(h)(1)(B)(ii) of the Communications Act. In the alternative, CompTel et al. request that the Commission propose a rule establishing a rebuttable presumption that an ILEC affiliate that provides wireline local exchange or exchange access service within the ILEC's service area under the same or a similar brand name is a "comparable" carrier under Section 251(h)(2). In either case, CompTel et al. request that the affiliate itself be subject to the obligations of ILECs under Section 251(c) as a result of such status under Section 251(h) and be treated as a "dominant carrier" for the provision of interstate services.

Using BellSouth BSE as an example, CompTel et al. discuss the range of services that ILEC "competitive" local service affiliates are intended to provide and the various types of resources that ILECs are providing to those affiliates. CompTel et al. also discuss the ways in which such ILEC affiliates are likely to be used to avoid the ILECs' Section 251 obligations, such as the resale obligation under Section 251(c)(4). As explained in the Petition, such transfers of resources and customer base to an affiliate providing the same services as the ILEC and in the same area render such an affiliate a successor or

assign of the ILEC under the ordinary meaning of those terms in corporate law. The same resource transfers and identical nature of the ILEC and its affiliate also justify a rule that such an ILEC local service affiliate is a comparable carrier under Section 251(h)(2). Such a successor or assign, or comparable carrier, should also be treated as a dominant carrier for all of the same reasons that the ILEC is treated as dominant.

B. ILEC Local Service Affiliates Operating in the ILEC's Service Area Facilitate Anticompetitive Strategies

Grant of the CompTel Petition is absolutely necessary to prevent the opening of a loophole to Section 251 that will, in time, swallow the rule if left unchecked. An ILEC's local service affiliate providing the same services in the same area as the ILEC -- whether through resale or the use of its own facilities -- plays the same role, economically, as the ILEC itself and thus can no more be considered a non-incumbent carrier than a new ILEC exchange that is installed to provide service to a new housing development or office complex. The coordination and market division that characterize ILEC dealings with their local service affiliates guarantee that such affiliates will be no more than arms of the ILEC and must be regulated accordingly.

As CompTel et al. point out, the establishment of ostensible CLECs by ILECs facilitates a wide variety of anticompetitive strategies. The illustration discussed in the Petition is the use of the ILEC CLEC gambit to avoid an ILEC's obligation under Section 251(c)(4) to offer at a wholesale rate for resale any

service it offers at retail, thus removing a significant competitive check on the ILEC's pricing.

This is hardly speculation, since the Connecticut Department of Public Utility Control (DPUC) authorized precisely such an end run around Section 251(c)(4) in approving Southern New England Telephone Company's (SNET's) reorganization plan. In granting such approval, the DPUC upheld one of the avowed purposes of the plan, which was to avoid SNET's Section 251(c)(4) obligation.[2] Because SNET America Inc. (SAI) would inherit SNET's retail operations and customers and would provide all retail services in SNET's place, the DPUC concluded that the resale duties of Section 251(c)(4) would no longer apply to SNET, while Section 251 would not be applicable at all to SAI, since it is not an ILEC.[3] Thus, competitors are deprived of the opportunity to purchase at wholesale the service packages and promotions that are offered by SAI but not by SNET, thereby removing an important competitive safeguard on SNET/SAI's behavior.

Setting up new local service affiliates increases the risk that ILECs will carry out other anticompetitive pricing strategies as well, given the leeway that state commissions have

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[2] See Decision at 13, DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of the Public Act 94-83, Docket No. 94-10-05 (Conn. DPUC June 25, 1997)(SNET "contends that the most notable market disadvantage presented to the [SNET] Telco is the requirement that it provide, at wholesale, essentially all of its retail telecommunications services including discount plans, service packages and promotions, at a [discount calculated pursuant to the 1996 Act]").

[3] Id. at 52-54.

in setting prices for unbundled network elements (UNEs). For example, price squeezes can be more easily imposed by having the ILEC provide overpriced UNEs, while its local service affiliate selectively provides the retail services using such UNEs at rates that do not reflect the full cost of the UNEs charged by the ILEC. If the local service affiliate is regulated as a nondominant carrier, there will be no effective regulatory check on its retail rates or the imputation of input costs. Thus, it will be able to target special offers to the large customers that are most susceptible to competition on a selective basis in order to "pick off" would-be competitors -- who may need the ILEC's overpriced UNEs -- and thereby deter competitive investment and suppress the development of local competition. Thus, by splitting up the provision of different categories of offerings between the ILEC and its lightly regulated local service affiliate in such ways, the "ILEC CLEC" gambit can be used to eviscerate the goals of Section 251 and the development of local competition.

The basic problem illustrated by the SNET reorganization and other variations on the ILEC CLEC strategy is that the ILEC and its local service affiliate will not be operating independently of one another but, rather, will be closely coordinating their efforts in the same manner as a single entity. As the Michigan Public Service Commission found, in reviewing the request of Ameritech Communications, Inc. (ACI) for certification to provide local service in Ameritech Michigan's service area, ACI was not

intended to compete with Ameritech Michigan, but, rather, to provide a retail outlet for Ameritech's bundled service packages.[4] That is true of any ILEC local service affiliate, including, by its own admission, BellSouth BSE, the local service affiliate mentioned in the CompTel Petition.[5] Such entities thus are "CLECs" without the "C;" they are simply alter egos of their affiliated ILECs.

Since ILECs and their local service affiliates are not intended to operate independently, they can exploit the ILEC's bottleneck monopoly by migrating its favored high-volume customers to the affiliate, which can become the preferred provider of new, innovative local services selectively offered to the favored customers, while the ILEC's local services are allowed to degrade and become technological backwaters serving residential users and other CLECs. Because the ILECs will enjoy continued monopoly, or at least highly dominant, status for the foreseeable future, they are under no competitive pressures to

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[4] Order Approving Application at 18, In the matter of the application of Ameritech Communications, Inc., for a license to provide basic local exchange service in Ameritech Michigan and GTE North Incorporated exchanges in Michigan, Case No. U-11053 (Mich. PSC Aug. 28, 1996).

[5] See CompTel Petition at 4. BellSouth's own witness testified that BellSouth BSE, "[does not] want to really compete with" BellSouth's incumbent local service affiliates; rather, its "services will be complementary to" BellSouth's incumbent services. See Testimony of Robert C. Scheye, Transcript of Testimony and Proceedings at 17, Application of BellSouth BSE, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services, Docket No. 97-361-C, Hearing No. 9703 (S.Car. PSC Nov. 5, 1997), attached hereto as Exhibit A.

invest in the incumbent local network. Meanwhile, if the ILEC's local service affiliates are not treated as incumbents, they will be under no legal obligation to provide their retail services at wholesale rates for resale or reasonably priced UNEs comprising those services to other CLECs.

Thus, other CLECs and residential and small business subscribers will be stuck with the ILEC's increasingly outmoded and inadequate network services and UNEs at the current excessive rates, while the ILEC's favored large customers will have access to state-of-the-art services from its local service affiliate. As noted above, if such affiliates are treated as nondominant CLECs, they will be free to offer such services at preferable rates on a selective basis to the larger customers that are the most susceptible to competing offers, thereby stifling incipient competition. Thus, no customer category, not even the larger customers, will enjoy the full benefits of competition.

As discussed above, the ILEC's excessively priced UNEs add to the price squeeze that can be carried out through selective retail price reductions by the ILEC's local service affiliate, but it should be noted that such discriminatory targeting by the affiliate will be possible, and effective, in suppressing competition whether or not the ILECs' UNEs are reasonably priced. The use of local service affiliates therefore affords ILECs a wide array of anticompetitive options, which can be used in tandem or individually.

That the ILECs will, in fact, use local service affiliates

to make special service offers not available from the ILECs themselves is shown by Ameritech's statement that if the Bell Operating Companies' (BOCs') Section 272 affiliates were permitted to provide local services, those affiliates would develop new services "that would not be available if the affiliate were limited to the local exchange services ... offered by the BOC itself."[6] In other words, the affiliate would be offering local services that would not be available through the BOC, and thus would not be available to competitors. There is no reason to believe that the same would not be the case for any ILEC's local service affiliate. Such market segmentation, as promised by Ameritech and carried out under the SNET reorganization, guarantees constant, close coordination between the ILEC and its local service affiliate at every step of product development, marketing and sales in order not to trip over each other, unlike the relationship between the ILEC and a true CLEC.

As these examples demonstrate, ILECs could use their local service affiliates to avoid their Section 251 and 252 obligations. In recognition of such dangers, the Texas Public Utilities Commission denied GTE Communications Corporation (GTE-CC), GTE's CLEC affiliate, a certificate of operating authority to provide local services in GTE's incumbent service areas.[7] One

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[6] Ameritech Comments at 16-17, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149 (April 2, 1997).

[7] Order, Application of GTE Communications Corporation for a Certificate of Operating Authority, Docket No. 16495, SOAH

of the Commissioners explained that such certification raised concerns as to

> whether it's anti-competitive and whether it circumvents regulation and whether or not it basically is counterproductive to opening these markets in a fair way to everybody.
>
> ....
>
> And we have on these affiliate issues said that we're not going to allow these 100 percent related affiliates to circumvent the requirements of our statute and the [1996 Act] for what these companies have to do. ... [I]t would make a mockery of the whole regulatory and legal scheme.[8]

Similarly, the Michigan Public Service Commission granted GTE-CC local service authority only in areas where Ameritech is the ILEC, adopting the position that GTE-CC "not be permitted to provide basic local exchange service in GTE North's exchanges until those exchanges are irreversibly open to competition."[9]

Docket No. 473-96-1803 (Tex. PUC Nov. 20, 1997).

[8] Comments of Commissioner Walsh, In the Matter of the Open Meeting to Consider Docket and/or Project Nos. 16495, et al., (Tex. PUC Oct. 22, 1997), at 94, 96, attached hereto as Exhibit B. Similarly, Pacific Bell Communications (PB Com), an affiliate of Pacific Bell, withdrew its application to provide local service in Pacific Bell's service area after consumer advocates and competitive carriers objected that such an arrangement could provide an opportunity for preferential treatment of PB Com by Pacific Bell. See Proposed Decision of ALJ Walker at 20-21, Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California, Application 96-03-007 (Cal. PUC May 5, 1997), withdrawn by Assigned Commissioner's Ruling (Oct. 15, 1997).

[9] Opinion and Order at 3, In the matter of the application of GTE Communications Corporation for the issuance of a license to provide and resell basic local exchange service in Ameritech Michigan and GTE North Incorporated exchanges in the State of Michigan and related approvals, Docket No. U-11440

In addition to the strategies discussed above, an affiliate could request new UNEs from the ILEC configured for the affiliate's unique needs that are not useful to other CLECs, which may already have their own facilities. Ostensibly, such UNEs would be available to all on a nondiscriminatory basis, but, since only the ILEC's affiliate would want them, there would be no practical check on the ILEC's preferential development or pricing of UNEs or other discrimination in favor of the affiliate in the provision of such UNEs. Such favoritism would be magnified if the ILEC were to provide operating, installation and maintenance services for the specially configured UNEs.

Given the detailed, technical nature of UNEs, it would be extremely difficult and time-consuming to articulate and enforce rules against such preferential development. The Commission would have to expend considerable resources in the day-to-day monitoring of ILEC product development and the local service affiliate's operations, as well as other CLECs' operations, that would be necessary to ensure that UNEs were not being developed that would be of more use to the ILEC's affiliate than to other CLECs. Such detailed, intrusive regulation, of course is precisely the sort of function that the Commission is trying to

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(Mich. PSC Dec. 12, 1997), attached hereto as Exhibit C. This does not mean that this Commission can leave this issue entirely to the states. The states differ widely in their approaches, with some states granting full authority to ILECs to operate local service affiliates in their own service areas. See CompTel Petition at 4. Given all of the ways in which use of such affiliates enables ILECs to undermine the local competition regime established by Sections 251 and 252 of the Act, this issue requires immediate remedial action by this Commission.

avoid, thus making it extremely unlikely that this type of discrimination would ever be effectively monitored or prevented.

An ILEC's local service affiliate could also coordinate with the ILEC in the construction of the affiliate's own facilities. The combination of unique UNEs from the ILEC with its own new facilities would make it more feasible for the affiliate to provide new local services not available from the ILEC, thus furthering the anticompetitive discrimination discussed above.

C. ILEC Local Service Affiliates Will Undermine Nondiscrimination Provisions in Interconnection Agreements

Finally, the ILEC CLEC strategy will nullify the nondiscrimination protections laboriously negotiated in the real CLECs' (i.e., CLECs not affiliated with ILECs) interconnection agreements with the ILECs. Those agreements typically provide that the ILEC will not discriminate in ordering, provisioning, repair and maintenance between its own customers and those of the CLEC reselling its services. Most of those agreements, however, do not address discrimination in favor of the ILEC's own local service affiliate. Thus, there are few agreements that require that the ILEC provide ordering, provisioning, repair and maintenance to a CLEC and the CLEC's customers on terms and conditions and at intervals no less favorable than to its own affiliate and its affiliate's customers. Once an ILEC sets up its own local service affiliate and begins migrating its favored customers to the affiliate, there is nothing in many interconnection agreements to stop the ILEC from favoring its own

affiliate's customers over other CLECs' customers.[10]

The impact of the absence of effective nondiscrimination provisions in interconnection agreements is aggravated by the ILECs' failure to provide equal access to Operations Support Systems (OSS). No Bell Operating Company (BOC) or other ILEC has fully implemented nondiscriminatory access to OSS for ordering, provisioning, maintenance and repair and billing for local service resale or UNEs, in spite of the January 1, 1997 deadline set in the Local Competition Order for such implementation.[11] The corrosive effects of such discrimination are aggravated in a situation where an ILEC favors not only its own customers but also its own affiliate's customers over all other CLECs and their customers.

Again, the problem of unequal access to OSS is not speculative. In Connecticut, SAI -- SNET's retail local service

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[10] Real CLECs and other entities that are injured by such ILEC discrimination in favor of the ILEC's affiliate would still have statutory remedies, but since the obligations of ILECs under Section 251 must, in the first instance, be implemented through agreements negotiated under Sections 251 and 252, the ILECs' avoidance of the nondiscrimination requirements in those agreements through the use of local service affiliates will undermine an important vehicle for the development of local competition established in Sections 251 and 252.

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶ 525 (1996), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), vacated in part on reh'g sub nom. Iowa Utilities Bd. v. FCC, 120 F.3d 753, further vacated in part sub nom. California Public Utilities Comm'n v. FCC, 124 F.3d 934, writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. Jan. 22, 1998), petition for cert. granted, Nos. 97-826, et al. (U.S. Jan. 26, 1998)(subsequent history omitted).

provider -- is locking up local service subscribers in advance of a statewide local service balloting process. SAI will be providing local service largely by reselling SNET's services, whereas MCI and other competitors may be entering the market through the use of UNEs. SNET, however, has OSS available only for resale orders, not for services provided through UNEs, thus providing SAI a distinct advantage over facilities-based CLECs. Such favoritism violates not only Section 251 but also Section 202(a) of the Act and provides an early warning of the behavior that can be expected from other ILECs with local service affiliates if the CompTel Petition is not granted.

D. ILECs Should Not be Permitted to Avoid Their Statutory Obligations Through the Use of Local Service Affiliates

Given the ways in which ILECs have used and will continue to use their local service affiliates to avoid their Sections 202(a), 251 and 252 obligations if left unchecked, there is ample precedent for ignoring the nominal distinction between the two entities and treating the affiliate as the undifferentiated operation of the ILEC that it really is. The Supreme Court has "consistently refused to give effect to the corporate form where it is interposed to defeat legislative policies." First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba, 462 U.S. 611, 630 (1983)(Cuba bank not permitted to avoid counterclaim of Citibank by splitting assets between two entities). Accord, Bangor Punta Operations, Inc. v. Bangor & Aroostook R.Co., 417 U.S. 703, 713 (1974); Anderson v. Abbott, 321 U.S. 349, 365

(1944) (the interposition of a corporation will not be allowed to defeat the legislative policy of the Federal Reserve Act and the National Bank Act relating to assessment of bank shareholders, whether that was the aim or only the result of the arrangement). In determining whether to disregard the corporate form, a court "must consider the importance of the use of that form in the federal statutory scheme, an inquiry that generally gives less deference to the corporate form than does the strict alter ego doctrine of state law." Leddy v. Standard Drywall Inc., 875 F.2d 383, 387 (2d Cir. 1989).

Thus, in a wide variety of circumstances, courts have disregarded the corporate form where the same is or could be used to circumvent a legislative purpose. See, e.g., United States v. Calhoon, 97 F.3d 518 (11th Cir. 1996) (for purposes of Medicare cost reporting, related organizations treated as one), cert. denied, 1997 US LEXIS 4573 (US 1997); Transcontinental Gas Pipe Line Corp. v. FERC, 998 F.2d 1313, 1321 (5th Cir. 1993) (where a company subject to the National Gas Act set up two unregulated subsidiaries to circumvent the filed rate requirements of the Act, the court held that the agency "correctly looked behind corporate forms and found that the three companies really were one."); Salomon, Inc. v. United States, 972 F.2d 837, 841 (2d Cir. 1992)("the tax consequences of an interrelated series of transactions are not to be determined by viewing each of them in isolation but by considering them together as component parts of an overall plan"); Donovan v. McKee, 845 F.2d 70, 71-72 (4th Cir.

1988) ("[T]here is no warrant in the statutory language or purpose for allowing operators to resort to such shell game maneuvers to avoid liability for black lung benefit payments ... [and thus defendants individually could not] ... avoid benefits payments simply by effecting convenient changes of the business form under which the coal mining operations are conducted."); Abdelaziz v. United States, 837 F.2d 95, 98 (2d Cir. 1988)(corporate form cannot be used to thwart congressional intent and shield store owners from consequences of committing food stamp fraud); Armco Inc. v. United States, 733 F. Supp. 1514 (C.I.T. 1990) (corporate form cannot be used to circumvent required countervailing export duties); United States v. Golden Acres, Inc., 702 F. Supp. 1097, 1107-08 (D. Del. 1988); Lowen v. Tower Asset Management, 829 F.2d 1209, 1220 (2d Cir. 1987)("Parties may not use shell-game-like maneuvers to shift fiduciary obligation to one legal entity while channeling profits from self-dealing to a separate entity under their control."); Alman v. Danin 801 F.2d 1 (1st Cir. 1986)(same).

Significantly, this principle has been applied in the context of enforcement of the Communications Act of 1934. See Capital Telephone Company, Inc. v. FCC, 498 F.2d 734, 739 (D.C. Cir. 1974)("To carry out statutory objectives, it is frequently necessary to seek out and give weight to the identity and characteristics of the controlling officers and stockholders of a corporation.... We find that substantial evidence supports the Commission's decision to pierce Capital's corporate veil in order

to carry out the statutory mandate to provide fair, efficient, and equitable distribution of radio service"); GTE v. United States, 449 F.2d 846, 855 (5th Cir. 1971) ("Where the statutory purpose could ... be easily frustrated through the use of separate corporate entities, [the FCC] is entitled to look through corporate form and treat separate entities as one and the same for purposes of regulation."); MCI Telecommunications Corp. v. O'Brien Marketing Inc., 913 F.Supp. 1536 (S.D. Fla. 1995) ("[P]iercing the corporate veil in the instant case furthers a purpose of the Communications Act; namely, preventing unreasonableness of rates and discrimination in interstate telecommunications charges.").

Thus, there is ample precedent holding that the corporate form cannot be used to frustrate Congress' intent with respect to the telecommunications field. CompTel's Petition should accordingly be granted in order that the ILECs' local service affiliates are appropriately treated as ILECs themselves when they provide service in the ILECs' service areas.

Conclusion

The close coordination that has already occurred and will occur between ILECs and their local service affiliates and the avoidance of Section 251 and other statutory obligations facilitated thereby require that such affiliates be treated as successors or assigns of the ILECs under Section 251(h)(1)(B)(ii) or comparable carriers under Section 251(h)(2). The lack of

independence and competition between them precludes any regulatory treatment of the affiliates as typical CLECs.

Moreover, the discrimination that is facilitated by the use of such affiliates is precisely the type of exploitation of bottleneck power that requires dominant treatment of ILECs' local services. The favoritism that an ILEC is able to bestow upon its affiliate and the affiliate's customers, as discussed above, depends on the ILEC's unique network resources. That the ILEC's affiliate might not own any facilities that were in place prior to passage of the 1996 Act, or any facilities at all, provides no justification for nondominant treatment of the affiliate. The exploitation of the ILEC's bottleneck power facilitated by the affiliate can only be curbed by regulation as a dominant carrier.[12] The ILECs' ratepayers are also injured by the cross-subsidies that result from the ILEC's provision of facilities and services to the affiliate that only it could use and that other carriers therefore would not want, as discussed above. Such favoritism amounts to a transfer of resources to the affiliate at less than cost. Dominant treatment is therefore also necessary to deter such cross-subsidies.

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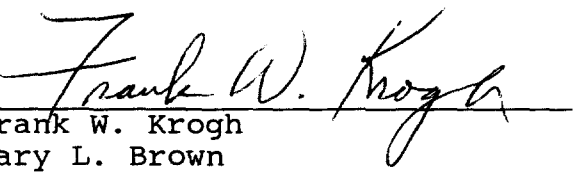
[12] The nondominant status accorded to the ILECs' interexchange services in Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-149 and CC Docket No. 96-61, FCC 97-142 (released April 18, 1997), is irrelevant to this proceeding, which involves ILEC affiliates in the same local monopoly market.

Accordingly, for the reasons stated above and in the CompTel Petition, such Petition should be granted, and ILEC local service affiliates treated as ILECs under Section 251(h) and as dominant carriers in the circumstances indicated.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Its Attorneys

Dated: May 1, 1998

EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #9703 **NOVEMBER 5, 1997** **2:30 P.M.**

DOCKET NO. 97-361-C: BELLSOUTH BSE, INC. - Application for a Certificate of Public Convenience and Necessity to provide Local Exchange Telecommunications Services.

HEARING BEFORE:

Chairman Guy Butler, Presiding; Vice Chairman Philip T. Bradley; and Commissioners Rudolph Mitchell, Cecil A. Bowers, Warren D. Arthur, IV, and William "Bill" Saunders.

STAFF:

D. Wayne Burdett, Manager, and James M. McDaniel, and William O. Richardson, Utilities Department; F. David Butler, Esq., General Counsel; and Mary Jane Cooper, Hearing Reporter.

APPEARANCES:

Harry M. Lightsey III, Esq., and Kevin A. Hall, Esq., representing BELLSOUTH BSE, INC., **Applicant**.

John M.S. Hoefer, Esq., representing MCI TELECOMMUNICATIONS CORP. and MCI METRO ACCESS TRANS., **Intervenor**.

B. Craig Collins, Esq., representing SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, **Intervenor**.

Francis P. Mood, Esq., and Steve A. Matthews, Esq., representing AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., **Intervenor**.

Russell B. Shetterly, Esq., representing ACSI, **Intervenor**.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS
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